SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955.

No. 460

EARL P. GREENWOOD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF PETITIONER

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INDEX

Subject Index

	Page
Brief of Petitioner	1
Opinions Below	1
Jurisdiction	1
Constitutional Provisions and Statutes Involved	2
Questions Presented	2
Statement of the Case	3
Summary of Argument	7
Argument	10
Conclusion	32
Appendix	33

Table of Cases

Craig v. *Steele*, 123 F.Supp. 453	21
Dixon v. *Steele*, 104 F.Supp. 904	19
Edwards v. *Steele*, 112 F.Supp. 382	20
Higgins v. *McGrath*, 98 F.Supp. 670	21
Higgins v. *United States*, 205 F.2d 650	10, 14
Kitchens v. *Steele*, 112 F.Supp. 383	21
United States v. *Greenwood*, 125 F.Supp. 777, 219 F.2d 376	1
Wells v. *Attorney General*, 201 F.2d 556	10, 12, 18
Wright v. *Steele*, 125 F.Supp. 1	15, 18

Constitution and Statutes

United States Constitution, Amendment V	8, 23
United States Constitution, Amendment X	23
28 U.S.C. 1254(1)	2
Section 4244, Title 18, U.S.C.	2, 7, 8, 10, 11, 17, 33
Section 4245, Title 18, U.S.C.	2, 7, 8, 11, 17, 34
Section 4246, Title 18, U.S.C.	2, 7, 8, 11, 12, 15, 35
Section 4247, Title 18, U.S.C.	2, 7, 8, 9, 11, 12, 17, 35
Section 4248, Title 18, U.S.C.	2, 7, 8, 9, 11, 12, 17, 36

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Opinions Below

The opinions of the Court of Appeals (R. 75, 89) are reported at 219 F.2d 376. The order and opinion of the District Court (R. 17-21) are reported at 125 F.Supp. 777 (W.D.Mo.).

Jurisdiction

The judgment of the Court of Appeals for the Eighth Circuit was entered on February 14, 1955. The petition

for a writ of certiorari was filed on March 14, 1955. Certiorari was granted on October 10, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Constitutional Provisions and Statutes Involved

The pertinent provisions of the United States Constitution are found in Amendment V and Amendment X to the said Constitution. The pertinent provisions of the United States Code are Sections 4244, 4245, 4246, 4247, and 4248. All of the foregoing provisions are set forth in the Appendix hereto.

Questions Presented

1. Whether under a proper interpretation of Sections 4246, 4247 and 4248 of Title 18, U.S.C., a person in Federal custody, such as petitioner, charged by indictment or information with a Federal offense, lawfully may be committed to the custody of the Attorney General of the United States, if such accused person is found to be insane or mentally incompetent to stand trial and it appears that his insanity or mental incompetency is more than temporary and is or may be permanent.

2. Whether Sections 4244, 4246, 4247 and 4248 of Title 18, U.S.C., and each of them are unconstitutional as encroachments upon powers reserved to the states by the Tenth Amendment, or as violative of the due process clause of the Fifth Amendment, so as to make petitioner's commitment thereunder unlawful.

3. Whether there was sufficient evidence to support the findings of the United States District Court in its order of July 30, 1954 that petitioner, if released, "probably would endanger the safety of officers, the property or other interests of the United States".

Statement of the Case

This case is before this Court on Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit to review an order of said Court entered on February 14, 1955, which affirmed an order of the Honorable Albert A. Ridge, United States District Judge for the Western Division of the Western District of Missouri, entered on July 30, 1954, finding the petitioner insane, etc., and committing the petitioner to the custody of the Attorney General of the United States (1) until the sanity or mental competency of the petitioner shall be restored; (2) until the mental condition of the petitioner is so improved that if he is released he will not endanger the safety of the officers, the property, or other interests of the United States; or, (3) until suitable arrangements can be made for the custody and care of the petitioner by the State of Ohio, the state of the accused's residence. (R. 48). An indictment in two Counts returned against petitioner charging armed robbery of a United States Post Office and jeopardizing the life of a postal clerk was filed on November 20, 1952. The crime was allegedly committed on October 22, 1952. (R. 1, 2). Thereafter in accordance with Rule 20, *Federal Rules of Criminal Procedure*, petitioner was transferred to the Eastern Division of the Northern District of Ohio (R. 2, 3) but at a hearing before that Court it was determined that petitioner was insane and the case was remanded to the Western Division of the Western District of Missouri (R. 7). Dr. Grossman, a psychiatrist, testified before the Ohio Court that he examined petitioner on December 29, 1952 and January 29, 1953 and that petitioner was suffering from schizophrenia (R. 6) and that he was possibly fully as sick or sicker in November, 1952 than he was in December, 1952 (R. 7).

On February 17, 1953, Judge Albert L. Reeves, of the

United States District Court for the Western District of Missouri, entered an order that the petitioner be delivered "into the custody of the authorities of the United States Medical Center for Federal Prisoners at Springfield, Missouri and that an examination be conducted by the medical authorities of said institution for the purpose of ascertaining the mental condition of the defendant and that a report be furnished the Court as soon as practicable." (R. 9, 10). Dr. C. E. Smith, Chief of the Psychiatric Service of the Medical Center for Federal Prisoners in Springfield, Missouri made a report on April 8, 1953, and it was the examiner's opinion that the petitioner was "legally insane". "Although he correctly verbalizes the difference between right and wrong, he is unable to properly choose between, because he is motivated by insane delusions. In addition, his "delusional thinking renders him unable to properly understand the nature of the charges pending against him and his mental confusion and depression interfere with his ability to cooperate with counsel in this defense." (R. 64). Petitioner remained in the custody of the Warden of the United States Medical Center for Federal Prisoners at Springfield, Missouri until May of 1954, at which time he was transferred from the Medical Center for Federal Prisoners at Springfield, Missouri to the custody of the authorities of the State of Ohio in compliance with an order of the Court made under date of February 2, 1954 (R. 19). On about February 1, 1954, the neuropsychiatric staff at the Medical Center for Federal Prisoners in Springfield, Missouri had filed a report with the Court wherein they "agreed unanimously that the patient (petitioner) remained psychotic and incompetent. The staff agreed that the patient's illness is chronic, of long standing and that the prognosis for recovery is poor." (R. 65).

An additional report of the Board of Examiners was made on or about February 4, 1954, relating to the petitioner and at that time the Board of Examiners concurred unanimously in the opinion that the subject remains psychotic and incompetent. The Board further concurs in the opinion that the subject is chronically ill and that at the present time there appears to be little likelihood of his recovery to the extent that he might be considered competent in the near future.

"The Board considered at length the question of this defendant's potential dangerousness under the conditions specified in Section 4247. The Board agreed that this subject might be considered potentially dangerous to the extent that if released he might conceivably persist in criminal activities of the type with which he is presently charged. In considering this man's mental illness the Board finds that he does not hold any fixed delusions concerning wanting to harm any person or group of persons either officials of the government or otherwise so that in this respect he probably would not "constitute a danger to the safety of officers, property or other interests of the United States." (R. 68).

After the petitioner was lodged in the custody of the authority of the State of Ohio, Dr. Royal G. Grossman, a psychiatrist in Cleveland, examined petitioner in May of 1954 and testified before the Probate Court in Cleveland that petitioner was clean and alert and in a period of remission. (R. 72). It is apparent that the Probate Court in Cleveland, Ohio determined that it was safe to release petitioner and he was so released. (R. 20, 72). Thereafter a warrant of arrest was immediately issued by the United States Attorney and petitioner was seized by the Federal authorities on or about May 18, 1954 and was returned to the jurisdiction of the United States District Court at Kansas City, Missouri. (R. 20). On June 23, 1954, the

Court appointed Dr. Herman S. Major and Dr. G. Wilse Robinson, Sr., psychiatrists, to examine the petitioner to determine his mental competency. (R. 14). Also petitioner was returned to the Medical Center at Springfield, Missouri for further observation. On Thursday, July 15, 1954, there was a hearing before Judge Ridge at which testimony was given by Dr. Major, Dr. Robinson and also by Dr. C. E. Smith, the Chief of the Psychiatric Service for the Medical Center at Springfield, Missouri, all in connection with the ability of the defendant to stand trial and while Drs. Robinson and Major found the defendant sane, the opinion of Dr. C. E. Smith and of his entire staff at the Medical Center at Springfield, Missouri was to the effect that petitioner remains "legally insane by reason of a major mental disorder which would prevent him from having a proper understanding of the proceedings pending against him and which also impairs his ability to properly assist in his own defense. They are further agreed that this subject's prognosis for recovery appears to be poor and that he would probably require indefinite hospitalization to insure his own safety and that of society. The staff does not consider the subject to be potentially dangerous except to the extent that if released, he might persist in engaging in criminal activities similar to those with which he is presently charged." (R. 71). At no time during petitioner's confinement at Springfield, Missouri did any of the psychiatrists find him to be sane. (R. 51).

Subsequent to the hearing of July 15, 1954, the United States District Court entered an order on July 30, 1954, finding that the defendant was insane and so mentally incompetent that he cannot stand trial on the criminal charges pending against him, further finding that if released, accused probably will endanger the safety of officers, the property or other interests of the United States, and further finding that no suitable arrangements for the custody

and care of the accused other than that which may be provided by commitment of accused to the custody of the Attorney General of the United States are presently available." (R. 18). As a consequence of the foregoing findings the Court entered an order committing petitioner "to the custody of the Attorney General of the United States or its duly authorized agents, (1) until the sanity or mental competency of the defendant shall be restored; (2) until the mental condition of the defendant is so improved that, if he is released, he will not endanger the safety of the officers, the property or other interests of the United States; or, (3) until suitable arrangements can be made for the custody and care of the defendant by the State of Ohio, the state of the accused's residence." It was further ordered "that defendant remain in the custody of the Attorney General of the United States until whichever event above stated shall first occur." (R. 18). It is from the above order of July 30, 1954 that appeal was taken to the United States Court of Appeals for the Eighth Circuit. This United States Court of Appeals affirmed the order of the United States District Court on February 14, 1955, and the petition for writ of certiorari was granted herein on October 10, 1955, as was the motion of petitioner to proceed in forma pauperis. Petitioner is still confined at the United States Medical Center for Federal Prisoners at Springfield, Missouri. He has been confined by Federal authorities since November of 1952, except for the brief period when he was in the custody of the State of Ohio.

Summary of Argument

I

Sections 4244, 4246, 4247 and 4248 of Title 18, U.S.C., properly interpreted do not authorize the detention in Federal custody of a person charged with a Federal offense

when such person is mentally incompetent to stand trial and it appears that he may never be mentally competent to stand trial.

A. The aforesaid construction is supported by decisions of the United States Court of Appeals for the Ninth Circuit and the United States Court of Appeals for the Tenth Circuit.

B. To hold otherwise would be to construe the aforesaid sections as unconstitutional since the Federal government does not have the power to restrain a man because of his mental condition and if it appears that a prisoner because of his mental condition will never be able to stand trial on the charges against him there is no justifiable reason for the Federal government to continue to restrain him.

II

If Sections 4244, 4246, 4247 and 4248 of Title 18, U.S.C., do authorize the detention in Federal custody of a person charged with a Federal offense who because of his mental condition probably never will be able to stand trial on the charges against him, these sections are unconstitutional as encroachments upon the rights reserved to the states under the Tenth Amendment and in violation of the due process clause of the Fifth Amendment.

A. The Federal government has neither constitutional nor inherent power to enter the general field of lunacy or to confine the insane and therefore when it appears that the continued detention of an accused rests exclusively or principally upon the ground of the accused's insanity the accused must be released to the custody of the state of his residence and the Federal government has no longer any power to restrain him.

B. The mere fact that the Federal government is dissatisfied with the action or facilities of a state with respect

to the insane is no justification whatsoever for the Federal government entering the field of lunacy.

C. Sections 4247 and 4248 are clearly based on insanity and neither has any relation to the charges pending against the accused or prisoner and therefore these sections are unconstitutional regardless of the question of the permanency of the mental condition of the person confined under these sections.

III

If the proposition as set forth in paragraph I herein is correct petitioner should be released because the evidence clearly shows that he will likely never be able to be tried on the charges against him because of his mental condition or if the statutes are construed to authorize the present detention of your petitioner they are unconstitutional and petitioner should be released because he is being unlawfully detained.

IV

There was insufficient evidence on which to commit petitioner on the ground that he might endanger the persons or the property of the United States and furthermore the United States has no authority to commit a person for such a reason.

Argument

SECTIONS 4236, 4247 AND 4248 OF TITLE 18, U.S.C., PROPERLY INTERPRETED, DO NOT AUTHORIZE THE COMMITMENT OF A PERSON IN FEDERAL CUSTODY, CHARGED WITH A FEDERAL OFFENSE, WHO IS MENTALLY INCOMPETENT TO STAND TRIAL, WHEN IT APPEARS THAT HIS INSANITY OR MENTAL INCOMPETENCY IS NOT TEMPORARY AND IS OR MAY BE PERMANENT, AND THEREFORE SINCE IT APPEARS THAT PETITIONER, EARL P. GREENWOOD, BECAUSE OF THE PERMANENCY OF HIS MENTAL CONDITION PROBABLY NEVER WILL BE ABLE TO STAND TRIAL ON THE CHARGES PENDING AGAINST HIM, HE SHOULD BE RELEASED.

I

Both the Court of Appeals for the Ninth Circuit and the Court of Appeals for the Tenth Circuit have held that the statutes in question authorize the detention by the Federal authorities of a person accused of a crime and who is awaiting trial, provided such person is only temporarily insane and whose trial can be expected within a reasonable time, but they have held that the said statutes do not authorize the detention in Federal custody of such a person who is found to be permanently insane or whose mental condition is such that it is not likely that he can be tried within a reasonable time. The case in point in the Tenth Circuit is *Wells* v. *Attorney General*, 201 F.2d 556. The case in point in the Ninth Circuit is *Huggins* v. *United States*, 205 F.2d 650.

Before discussing these cases in detail it might be advisable to review briefly the sections of the United States Code which are applicable. Section 4244, Title 18, U.S.C., provides that when, after arrest and prior to sentence or prior to the expiration of any period of probation, the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be insane he shall file a motion for judicial determina-

tion of such competency. Or, the accused may file a motion and in either case the Court may appoint a psychiatrist to examine the mental condition of the accused. If the report indicates a state of insanity the Court shall hold a hearing upon due notice and make a finding with respect thereto. Section 4245 of Title 18, U.S.C., covers a situation where a person has been convicted of a Federal crime and it is thereafter determined that it is likely that he was incompetent at the time of his trial and that issue was not raised at the trial and this section is not directly in point in this case. Under Section 4246, Title 18, U.S.C., whenever the trial Court shall determine under Section 4244 that an accused is mentally incompetent the Court may commit the accused to the custody of the Attorney General until the accused shall be mentally competent to stand trial or until the charges against him are disposed of according to law. If the Court shall determine that the conditions specified in Section 4247, Title 18, U.S.C., exist, the commitment shall be governed by Section 4248, Title 18, U.S.C. The conditions as specified under Section 4247 are apparently that "The accused if released will probably endanger the safety of the officers, the property or other interests of the United States and suitable arrangements for the custody and care of the prisoner are not otherwise available". A commitment under Section 4248 shall run "until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property or other interests of the United States or until suitable arrangements have been made for the custody and care of the prisoner by the state of his residence, whichever event shall occur first". Insofar as the instant action is concerned, petitioner was examined under Section 4244, a hearing was had, and the Court made a finding that the accused

was mentally incompetent to stand trial and further found under Section 4246 that the conditions in Section 4247 existed and the order of the Court entered on July 30, 1954 was in accordance with the provisions of Section 4248. These sections are obviously so interrelated that they must stand or fall together.

In the case in the Tenth Circuit referred to above, *Wells v. Attorney General*, 201 F.2d 556 an order had been entered by the District Court confining the accused who was not competent to stand trial under Section 4246, Title 18, U.S.C., to the custody of Attorney General or his authorized representative until he became mentally competent to stand trial or until the charge against him was disposed of according to law. The accused instituted habeas corpus proceedings in which he challenged the validity of the order and his confinement thereunder on the ground that the United States was not empowered to detain and incarcerate him for an indefinite period of time, perhaps for life, in advance of trial of the criminal charge merely because he was insane. The trial court had denied the petition and the Court of Appeals in considering the matter stated (l.c. 559):

> "The several states in their character as *parens patriae* have general power and are under the general duty of caring for insane persons. The prerogative is a segment of police power. In the exercise of such power, insane persons may be restrained and confined both for the welfare of themselves and for the protection of the public. And if the exactions of due process are met, such restraint and confinement do not violate any constitutional right of the individual. *In re Dowdell*, 169 Mass. 387, 47 N.E. 1033; *Sperry v. German Savings Bank*, 192 N.Y. 8, 84 N.E. 406; *McMahon v. Mead*, 30 S.D. 515, 139 N.W. 122; *State v. Saffron*, 146

Wash. 202, 262 P. 970; *Ex Parte Perry*, 137 N.J. Eq. 161, 43 A.2d 885; *People v. Jaussen*, 263 Ill. App. 101; *Shaplen v. Cahoon*, D.C., 258 F. 752.

"While the care of insane persons is essentially the function of the states in their sovereign capacity as *parens patriae*, and while the Federal government has neither constitutional nor inherent power to enter the general field of lunacy, Congress has the power to make provision for the proper care and treatment of persons who become temporarily insane while in custody of the United States awaiting trial upon criminal charges, and to make provision for the care and treatment of federal prisoners who become mentally incompetent during their incarceration after conviction. *Estabrook v. King*, 8 Cir., 119 F.2d 607; *Jones v. Pescor*, 8 Cir., 169 F.2d 853."

The Court further stated (l.c. 560):

"It is implicit in the quoted language that the concern of Congress was to make provision for the care and treatment of persons whose return to mental competency at sometime in the future is reasonably to be expected, not those hopelessly insane and whose restoration to mental competency is never to be expected. Furthermore, to construe the Statute as authorizing the United States to detain and incarcerate perhaps during the remainder of their lives, persons who were permanently and hopelessly insane at the time of their arrest on criminal charges or who become so while awaiting trial on criminal charges and for that reason will never be tried is to ascribe to Congress an effort to clothe the United States with power to assume the role of *parens patriae* and enter the general field of lunacy in respect to persons in that condition. Neither

the language of the statute nor its legislative history compels that construction. Instead, it is fairly clear that, in the enactment of the statute the intent and purpose of Congress was to go no further than to make humane provision for the care and treatment of persons who were temporarily incompetent at the time of their arrest or who become so before trial on criminal charges and whose restoration to competency may be reasonably expected at some time in the future and therefore whose trial on the criminal charges at some time in the future may reasonably be expected. That construction does not violate the language of the statute. It does not run afoul of the legislative history of the statute. And it preserves the statute against the present attack of invalidity on constitutional grounds."

The United States Court of Appeals for the Tenth Circuit thus recognized that the Constitution did not authorize Congress to invade the general field of lunacy and attempted to construe the Federal statutes relating to mental defectives only to permit the detention of those accused of a crime who are temporarily insane and accordingly remanded the case to the District Court for the determination of the permanency of the petitioner's condition.

The United States Court of Appeals for the Ninth Circuit in the case of *Higgins* v. *United States*, 205 F.2d 650, approved the ruling in the *Wells* case that Congress could provide for the care of those who become temporarily insane while awaiting trial and held that the accused, if it was determined he was unable to stand trial within a reasonable time by reason of his mental capacity, must be released. The Court recognized that to hold otherwise would be to construe the statute as unconstitutional. The Court stated at the conclusion of its opinion as follows (l.c.653):

"Upon the going down of the mandate, the court should promptly determine whether defendant is presently able mentally to stand trial or in the near future will be. Dependent upon the court's determination that defendant is or soon will be able to stand trial, he should be put to trial without unnecessary delay. If the court should determine that defendant is not, and will not within a reasonable time be able to stand trial by reason of mental incapacity, he should be released from federal restraint, preferably to appropriate state authorities."

The opinion of Judge Charles E. Whittaker of the United States District Court for the Western District of Missouri in *Wright* v. *Steele*, 125 F.Supp. 1, is substantially in accord with the opinion of the Ninth Circuit in the *Wells* case and of the Tenth Circuit in the *Higgins* case. In the *Wright* case petitioner had been confined by the United States District Court for the Southern District of West Virginia under Section 4246, Title 18, U.S.C. "until he shall be mentally competent to stand trial or until or until the pending charges against him are disposed of according to law, whichever shall first occur, or unless and until he is determined to be permanently incompetent by proper authorities." Judge Whittaker cited the *Higgins* case and the *Wells* case with approval and concluded that the statutes in question authorized the detention of a person who was temporarily insane while in custody of the United States awaiting trial upon criminal charges and that if petitioner was not within a reasonable time after his commitment under Section 4246 found mentally competent to stand trial upon the charges against him he must be discharged. The Court stated (l.c.3):

"Sections 4244 and 4246, Title 18 U. S. C., obviously were enacted as a shield to protect a person, temporarily mentally incompetent, from having to stand trial, upon charges which if committed by a sane person would constitute a Federal offense, until such accused has recovered from his temporary incompetence sufficiently to understand the charges against him and to intelligently assist in his own defense, and care must be taken to see that the period consumed in determining his competency or incompetency to stand trial upon those charges does not approximate, and certainly not exceed, the probable sentence, less 'good' time he would have received and served had he pleaded, or been found, guilty as charged, for that would be to turn the statutory shield into a sword."

In the above case the Court concluded that as a matter of law under the circumstances one and one-half years was a reasonable time within which to determine the competency of the accused to stand trial on the charges against him and that to hold petitioner for a longer time would be to extend the statutes in question beyond constitutional limits. While this opinion was modified the modification does not in any way affect the holding therein. It is interesting to note in Judge Whittaker's opinion that he stated in substance that while a state institution or state authorities might have facilities which would be less suitable to the needs of the petitioner yet the humanitarian factor was not for his determination but the sole question before him was whether or not petitioner was being lawfully deprived of his liberty and the Court concluded that he was.

As to whether or not your petitioner, Earl P. Greenwood, has been detained an unreasonable time to determine his mental competency to stand trial we should emphasize that he has now been in Federal custody since November of

1952, a period of three years, except for a very brief period when he was in the custody of the authorities in the State of Ohio. Greenwood was found to be suffering from schizophrenia and mentally incompetent by a psychiatrist who testified before the United States District Court in Cleveland, Ohio at a hearing on February 2, 1953 (R. 6). Successive reports of the neuro-psychiatric staff at the United States Medical Center for Federal Prisoners, in Springfield, Missouri dated April 8, 1953, January 14, 1954, February 4, 1954 and July 8, 1954 and set forth in detail on pages 59 to 71 of the Record cover a period of fifteen months and clearly show the permanency of petitioner's mental condition. As early as February 2, 1954, Judge Albert Ridge of the United States District Court, Western District of Missouri, who made the final order that is being appealed from herein, refered to the report of the staff of the Medical Center for Federal Prisoners at Springfield, Missouri made on February 1, 1954 wherein it was found that petitioner Greenwood remained "psychiotic and incompetent", and "that it is unlikely that this subject will regain his sanity in the near future" and the Court stated "it now having been determined that defendant is so mentally defective that he will probably never be able to stand trial on the charge pending against him in this Court, a further hearing must be held which will resolve the power to commit defendant as mentally defective under the condition specified in Section 4247 * * *" (R. 12). Judge Ridge in his order made on July 30, 1954 again found that "accused herein is presently insane and so mentally incompetent that he cannot stand trial on the criminal charges pending against him in this Court", (R. 18).

If Sections 4244, 4246, 4247 and 4248 of Title 18, U. S. C. are construed in accordance with the foregoing authorities we must conclude under the facts in this case that petitioner should be released for the reason that the record shows that

his mental condition is not temporary, that he has been confined already for a period of three years, that it appears unlikely that he will ever be able to stand trial on the charges against him.

II

IF SECTIONS 4244, 4246, 4247 AND 4248, OF TITLE 18, U.S.C., PROPERLY CONSTRUED AND INTERPRETED, PROVIDE FOR THE DETENTION OF A PERSON ACCUSED OF A FEDERAL CRIME WHO IS PERMANENTLY INSANE AND WHO APPEARS WILL NEVER BE ABLE TO STAND TRIAL ON THE CHARGES AGAINST HIM, WHEN THESE SECTIONS ARE CONSTITUTIONAL AS ENCROACHMENTS UPON POWERS RESERVED TO THE STATES BY THE TENTH AMENDMENT AND AS VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT AND THEREFORE PETITIONER'S COMMITMENT THEREUNDER IS UNLAWFUL AND HE SHOULD BE RELEASED. FURTHERMORE, SECTIONS 4247 AND 4248 OF TITLE 18, U.S.C., ARE UNCONSTITUTIONAL AS VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT AND AS ENCROACHMENTS UPON POWERS RESERVED TO THE STATES UNDER THE TENTH AMENDMENT, REGARDLESS OF WHETHER OR NOT THEY AUTHORIZE THE DETENTION OF A PERSON ACCUSED OF A FEDERAL CRIME WHO IS PERMANENTLY INSANE.

The cases of *Wells* v. *Attorney General*, 201 F. 2d 556; *Higgins* v. *United States*, 205 F. 2d 650, and *Wright* v. *Steele*, 125 F. Supp. 1, discussed *supra*, are clearly authority for the first sentence of the above proposition. These cases in holding that the statutes in question in order to be constitutional must be construed so as to authorize only the detention of those accused of Federal crimes who are temporarily insane, necessarily hold that if the statutes authorize the detention of those accused of Federal crimes who are permanently insane or who because of their mental incompetency are unlikely ever to be able to stand trial on the charges against them, then these statutes are uncon-

stitutional. Judge Duncan of the United States District Court for the Western District of Missouri has made a very clear analysis of this problem which is found in the case of *Dixon v. Steele*, 104 F. Supp. 904. We quote from page 908:

"If Sec. 4246, Title 18, U. S. C. A. is valid, then an insane person charged with a criminal offense can be imprisoned for the rest of his life without any trial as to the issue of whether or not he committed an offense, but only as to the question of whether or not he was sane or insane at the time of the hearing.

"In this case it seems clear that there is no dispute as to the question of applicant's insanity, and little dispute as to the fact that it will continue so long as the man shall live. For that, he is confined without term in Federal custody—confinement not for a crime, but for insanity.

"This question was fully discussed in the Memorandum Opinion in the first case, filed on June 28, 1951. There is no question about the right of the Congress to restrain insane persons in those jurisdictions over which it retains complete legislative authority, such as the District of Columbia and the Territories, and over such groups as it exercises exclusive legislative authority, but it is difficult for me to conceive of Federal constitutional authority to invade the rights of the states in the confinement of its citizens on the ground of insanity.

"Suggestion has been made that in view of the fact that the party is being held in custody for the violation of a Federal law, such custody may continue until the case is disposed of, although the accused person may be hopelessly insane. With that view I cannot agree.

"It is my conclusion that the right to confine persons

for insanity is reserved to the states, and that the statute in so far as it attempts, if it does, to confer upon a court the right to commit an accused person to the United States authorities for imprisonment for an uncertain, indefinite time pending restoration to his sanity or until the charge against him is otherwise disposed of, is outside the constitutional authority of the Congress, and that the applicant in this case is being illegally restrained of his liberty, and is entitled to be released."

The above view was followed again by Judge Duncan in the case of *Edwards v. Steele*, 112 F. Supp. 382, in which Edwards had been convicted and sentenced in the United States District Court for the District of Columbia. Subsequent to the conviction the Court set aside same on the ground that the defendant was mentally incompetent at the time of his conviction and was unable to understand the proceedings against him or to assist in his defense. Pursuant to these findings Edwards was committed to the custody of the Attorney General of the United States under authority of Section 4246, Title 18, U. S. C. Edwards filed a petition for *habeas corpus* and the Court in granting his petition held and stated as follows (l. c. 383):

"The petitioner alleges that he is being illegally restrained of his liberty in that he has not been convicted of any offense and that he is being confined solely on the ground that he is insane. The court has heretofore passed on this question in numerous cases, the first of which was *Dixon v. Steele, Warden*, D. C. 104 F. Supp. 904. It is the opinion of this Court as stated in that case, that the United States courts may not commit persons who have not been convicted of any offense to confinement which might be for their natural lives in many instances, and that the adjudica-

tion and confinement of insane persons is a state function and not the function of the United States.

"It is further the conclusion of the court that a person who was insane at the time of the commission of an offense is not legally capable of committing an offense, and that question should be determined where a defendant is found to be insane. If he is insane at the time of the commission of the offense, he is not legally guilty and cannot be confined in a Federal institution, except in such jurisdictions where the United States has exclusive jurisdiction.

. . . . . .

"The court is without authority to determine the question of petitioner's sanity at the time of the commission of the offense. The petitioner is being confined in violation of his constitutinal rights. The petition is sustained and the writ is granted."

The foregoing two cases clearly hold that insofar as the legislation in question authorizes the Federal government to confine innocent persons solely because of their insanity, it is an encroachment upon the reserve powers of the states to deal with insane persons.

We recognize that the majority opinion by the United States Court of Appeals for the Eighth Circuit below as well as the opinions by Judge Ridge of the United States District Court for the Western District of Missouri in *Higgins* v. *McGrath*, 98 F. Supp. 670; *Kitchens* v. *Steele*, 112 F. Supp. 383, and *Craig* v. *Steele*, 123 F. Supp. 153, are in conflict with our position and in conflict with the previous opinions which we have cited in this brief. The position taken by the United States Court of Appeals for the Eighth Circuit and by Judge Ridge appears to be that since the Federal government has the power to enact a criminal code

and to legislate regarding Federal crimes that the legislation in question is a necessary and proper exercise of the foregoing general power. We respectfully submit that this conclusion is not warranted. The Court below stated categorically that we think that "the validity of the legislation in suit does not in any way depend upon the probable duration of the mental incompetency of Federal prisoners, who, in conformity with Section 4244 are found to be mentally incompetent". (R. 88.) Certainly if an accused who is presumed to be innocent is so mentally incompetent that it is unlikely that he will be able to stand trial on the charges against him there is no necessity in keeping him so that he might be tried on the charge against him because the evidence shows that it is unlikely that he will ever be so tried. We must necessarily conclude that if such a person is being detained and restrained indefinitely by Federal authorities, he is being restrained because of his mental condition and not because he has been charged with the violation of a federal law. Such detention is certainly not a reasonable exercise of the power of the Federal government over those accused of violating the laws of the United States.

We respectfully submit that petitioner is being in effect detained by the Federal authorities solely because he is incompetent. It is fundamental that the government of the United States is a government of limited and restrained powers while the governments of the several states are general and residuary as to the powers which are exercised by them. Every grant of power to the Federal government is limited to those expressly mentioned in the United States Constitution or to those arising therefrom by necessary implication. It has been established for many years that when the Constitution gives a general power it also gives by implication that power and that power alone necessary for the exercise of the general power; but the implication must be necessary and not conjectural and when the means

for the exercise of the granted power are given, no other or different means can be implied as being more effectual or convenient.

There is no conceivable necessity for the confinement of petitioner as being in furtherance of other authorized acts about to be or which will be taken. One can search the entire United States Constitution and we do not find the words "insane" or "incompetent". The Federal government can punish for certain crimes and it is understood that if a prisoner becomes mentally ill after being *convicted* of a crime, and while serving his sentence, he should be treated and cared for. But in the present case your petitioner, Earl P. Greenwood, a citizen, not an offender in the eyes of the law, but one who has been so unfortunate as to lose his mental capacity is being held indefinitely by the United States merely because he is unable to stand trial on the charges pending against him. No jurisdiction in this matter can be conferred upon the Federal government under any statute or Act of Congress.

Petitioner's present commitment is in violation of Amendment X and Amendment V of the United States Constitution. Amendment X to the Constitution of the United States provides that "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people". Amendment V of the United States Constitution provides that no person shall "be deprived of life, liberty or property without due process of law". Why is petitioner being deprived of his liberty? Is it because he has been indicted? Is it because he is insane? Is it because it is contended that "if released, accused probably will endanger the safety of the officers, the property or other interests of the United States"? Is not the last provision a vague, general and tenuous one upon which to base the permanent confinement of a man who has not been proved

to be guilty of any crime and whose only offense is that he has become "mentally ill"?

Counsel for the United States has made two arguments below which should be mentioned at this point. First they have contended that the cases cited by us in support of our petition arise under Section 4246 wherein the defendant has been committed "until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law" while the commitment in the instant action was under Section 4248, Title 18, U.S.C. to-ram "until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property or other interests of the United States or until suitable arrangements have been made for the custody and care of the prisoner by the state of his residence whichever event shall first occur" said sentence under 4248 being made after findings under Section 4247 "that the prisoner is insane or mentally incompetent and that if released he will probably endanger the safety of the officers, the property or other interests of the United States and that suitable arrangements for the custody and care of the prisoner are not otherwise available". First we submit that the Sections in question must stand or fall together as they are absolutely inter-related and the procedure must commence with Section 4244 followed by Sections 4246, 4247 and 4248 before the commitment of any persons such as petitioner is purportedly complete. The attorneys for the United States have further contended below that because the petitioner's confinement is conditioned on any one of three possible events which could conceivably happen that it is not permanent. First we submit that the fact remains that petitioner has been shuffled back and forth from Kansas City to Springfield to Ohio for a period of practically three years

and there is no indication that the situation will change or that his confinement by the Federal government will cease.

Secondly, we submit that petitioner's confinement under the provisions of Sections 4247 and 4248, Title 18, U.S.C., is clearly unconstitutional both as being violative of the Tenth Amendment and of the Fifth Amendment of the Constitution, regardless of the question of the permanency of petitioner's mental incompetency. Under these sections the confinement is solely because of the mental condition of the prisoner and certainly not a proper exercise of the power of the United States over those accused of violating the Federal Criminal laws. Section 4247 deals primarily with the situation where a prisoner whose sentence is about to expire is found to be mentally incompetent and a determination is made that "if released he will probably endanger the safety of the officers, the property or other interests of the United States and that suitable arrangements for the custody and care of the prisoner are not otherwise available". In other words, the prisoner has already been convicted and he has completely served his sentence and been punished and yet this Section authorizes his continued confinement by the Federal authorities partially on a finding that suitable arrangements are not available for the prisoner elsewhere.

Now we are reaching the crux of the problem. What has really happened is that the Federal government has been dissatisfied with the care given by the states to those mentally incompetent who have been released by the Federal authorities. So under the legislation in question the Federal government concludes that it has a mentally incompetent person in custody for whom the states according to the Federal government do not have suitable facilities and the Federal government further decides that "he will probably endanger the safety of the officers, the property or other interests of the United States" so the Federal

government imprisons him indefinitely. Certainly the Federal government is here invading the field of lunacy. They are not detaining this man because he has committed a Federal offense for in this particular situation he has already completely served his sentence. They are detaining him solely because of his mental condition and because of the finding, without a jury, that he might be dangerous or that suitable arrangements are not available elsewhere for him. We submit that the mere fact that the Federal government is dissatisfied with the manner in which the states are handling or treating the insane and concludes that suitable arrangements are not available for a person in the state of his residence, certainly does not give the United States authority to seize this insane person and to confine him.

We submit there is no constitutional justification for the confinement of a prisoner who has served his sentence and who is restrained under the provisions of Sections 4247 and 4248. There is considerably less justification for the confinement of your petitioner under these provisions. Petitioner having never been convicted of the crime with which he is charged and being unable to stand trial must be presumed to be innocent. Now under these sections we have an innocent man who is being restrained by the Federal authorities because he is mentally incompetent, presumably dangerous, and suitable arrangements are purportedly unavailable in the state of his residence. Again we submit that the Federal government cannot take over a field reserved to the states merely because it is dissatisfied with the action or inaction taken by the states with respect to this field. Under this legislation a United States Court determines that "suitable arrangements are not available in the State of Ohio for the detention of this petitioner". Dangers in this kind of statute are obvious.

At this point it is important that we review the record in this case and note that on February 2, 1954, Judge Albert Ridge of the United States District Court made an order in which he found that it was unlikely that the petitioner would probably be able to stand trial on the charges pending against him and in which he suggested that the petitioner might be transferred to the proper authorities of the state of his residence (R. 12, 13). It was pursuant to this suggestion that petitioner was transferred to the authorities in the State of Ohio and taken into custody by the authorities in the State of Ohio (R. 20). Apparently the matter came up before the Probate Court in Cleveland, Ohio, and it was determined by the authorities in Ohio that it was safe for petitioner to be released and he was released by the authorities in the State of Ohio in May of 1954 (R. 20, 72). As soon as he was released by the State of Ohio he was immediately seized under a warrant issued by the United States Attorney and returned to the Western District of Missouri where further proceedings were had and he was finally committed under the order of July 30, 1954. So we have this situation which occurred: the United States released a man to Ohio, Ohio determined that it was safe for him to be released and as soon as he was so released he was immediately seized by the United States and ultimately returned to the Federal prison at Springfield, Missouri, as an incompetent who might endanger the officers, the property or other interests of the United States and on a finding that suitable arrangements for the custody and care of the prisoner are not otherwise available. In other words, the United States has apparently concluded that it does not believe that Greenwood should be at large and therefore regardless of the fact that the State of Ohio has jurisdiction over him as a mentally incompetent person, nevertheless the United States will seize him and restrain him if

they are dissatisfied with the action taken by the state of the man's residence.

Thus when we see the statutes in operation we observe more clearly that it is not a necessary and proper exercise of the power of the United States over Federal crimes. Judge Van Oosterhout who wrote the dissenting opinion in this case below has carefully analyzed this problem and the statutes in question and come in our opinion to a correct conclusion. He was of the opinion that one charged with a Federal offense who is mentally incompetent to stand trial might be held in custody for a reasonable time but the Judge further stated, "However, when it appears with reasonable certainty that the defendant is permanently insane and that he will never be mentally competent to stand trial, constitutional power on the part of the Government is lacking to incarcerate the defendant for an indefinite period, likely the remainder of his life" (R. 89). Judge Oosterhout then discussed the provisions of Sections 4247 and 4248 and came to the conclusion that these sections were clearly "bottomed upon insanity rather than criminality". He recognized that if the defendant was being held only to await trial there was no necessity for the provisions as set forth in Section 4247.

We believe that it is of extreme importance to note that the provisions of Sections 4247 and 4248 and your petitioner's commitment thereunder are in no way related to the pendency of the charge against the petitioner. If the charges against your petitioner are dismissed by the United States, nevertheless he will continue to be held under the provisions of his commitment. Can there be any clearer showing that petitioner is not being held for the purpose of awaiting trial on the charges against him? Let us assume that it is subsequently determined by the United States that the crime in question was never committed or that petitioner is innocent of the charges and the United States

accordingly dismisses the charges against petitioner. Nevertheless his commitment under Section 4248 would continue. Clearly this is not a necessary and proper exercise of the power of the United States over Federal crimes. We submit that regardless of the question of the pertinency of petitioner's mental incompetency that Sections 4247 and 4248 as applied to the petitioner in this case are unconstitutional and violate both the Tenth Amendment and the Fifth Amendment to the United States Constitution.

III

THERE WAS NO SUFFICIENT EVIDENCE TO SUPPORT THE THE FINDING OF THE COURT IN ITS ORDER OF JULY 30, 1954 THAT PETITIONER IF RELEASED "PROBABLY WILL ENDANGER THE SAFETY OF OFFICERS, THE PROPERTY, OR OTHER INTERESTS OF THE UNITED STATES" AND ACCORDINGLY SAID ORDER MUST BE SET ASIDE AND PETITIONER RELEASED.

Petitioner without in any way waiving the foregoing contends that there was insufficient evidence to support the aforesaid finding under Section 4247 which must have been made to support a commitment under Section 4248. Dr. Robinson who examined petitioner on June 28, 1954, testified at the hearing before Judge Ridge on July 15, 1954, that he didn't know whether or not the petitioner would become dangerous or not, "whether he will become a danger to society or not". He testified that he will probably do some more stealing (R. 38). Dr. Smith, Chief of the Psychiatric Service at the Medical Center for Federal Prisoners at Springfield, Missouri, referred to the report of the Board of Examiners at that institution made on February 4, 1954 as follows:

"Question: But you did not find that he had any fixed delusions concerning wanting to harm any one

son or group of persons, officials of the government or otherwise?

"Answer: No, Counselor, we did not and we pointed that out because had we found evidence of such delusions if he had held fixed ideas that government people wanted to hurt him or if he held ideas that he wanted to hurt the government either one might have been construed as making him potentially dangerous.

"Question: Did you ever notice any tendency the man had toward violence toward any person?

"The Court: I don't think the Doctor finished his statement. Had you finished it, Doctor?

"Answer: That is, if he held ideas that he wanted to harm the government or its instrumentalities or perhaps even if we had been able to develop ideas that the government wanted to harm him, we might have felt that there was indication of potential dangerousness but we found neither" (R. 46).

Dr. Smith later testified that he thinks that this man *might* continue to engage in some kind of criminal activities.

It is submitted that the evidence presented is not sufficient to support the finding of the Court in the order of July 30, 1954 that the accused if released "probably will endanger the safety of officers, the property, or other interests of the United States". It is further submitted that assuming sufficient evidence had been introduced to support such a finding the United States has no authority under the Constitution to commit a man upon the finding of a Judge that the accused might probably endanger persons or property. If a man's mental condition is such that he is dangerous, certainly it is within the province of the states under their powers over lunatics and the insane to take care of the man and incarcerate him if necessary. If the United States government can commit a man merely because it has been

determined by the Court that the accused "probably will endanger the safety of officers, the property, or other interests of the United States" then I suppose such a finding could be made as to any person who is mentally incompetent and *might* be potentially dangerous; no one is free from being subject to seizure and the Federal government is given free reign in the field of insanity. This is just an additional encroachment into the rights of the states and of the individuals.

In connection with the finding of the Court as to the possible dangerous condition of petitioner it is important to note the statement made by Dr. Charles E. Smith, Chief of the Psychiatric Service at the Medical Center for Federal Prisoners when he testified at the hearing before Judge Ridge on July 15, 1954 as to the mental condition of your petitioner. This statement is as follows:

> "One of the factors which complicates this whole thing is that as you probably know the hospitals every day are releasing men of this type, that is; they are turning them out on the streets, presumably, at least, with responsible relatives, that sort of thing. So that there are certainly many schizophrenics on the streets, whose illness is of the same severity as the defendant's here, perhaps, so that there is a great pressure on their part apparently to turn those men loose to make room for men that they conceive as worse." (R. 56, 57).

This statement further indicates the apparent dissatisfaction of the Federal authorities in some cases with the care given by the states to the mentally incompetent but this dissatisfaction is no basis whatsoever for allowing the United States to seize and restrain an incompetent person who has been released by the state authorities.

Conclusion

We therefore conclude and show that the petitioner is being restrained by the Federal authorities in violation of his Constitutional rights; that Sections 4244, 4246, 4247 and 4248 of Title 18, U. S. C., properly construed, do not authorize the continued commitment of your petitioner; that if the foregoing sections do authorize the commitment of your petitioner, they are unconstitutional and violate the Tenth Amendment and the Fifth Amendment to the United States Constitution; that Congress does not have the power, either expressed or implied, to imprison for insanity in this instance; that the Acts and Sections in question infringe upon the rights reserved to the states; that petitioner is being deprived of his liberty without due process of law; that petitioner is probably serving a life sentence although he has committed no crime and his only offense is that he is mentally ill; that there was not sufficient evidence upon which to commit petitioner on the ground that he might endanger the persons or the property of the United States and further that the United States has no authority to commit a person upon a finding "that suitable arrangements for the custody and care of the prisoner are not otherwise available"; that the United States cannot invade the field of lunacy merely because the Federal authorities are of the opinion that suitable arrangements are not available in the various states for the insane; and for each and all of the foregoing reasons the petitioner submits that he should be released from Federal restraint.

Respectfully submitted,

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APPENDIX

1. The pertinent provisions of the United States Constitution involved herein are as follows:

Amendment V to the Constitution of the United States:

> "No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *"

Amendment X to the Constitution of the United States:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people."

2. The pertinent provisions of the United States Code are as follows:

> Sec. 4244. Mental Incompetency After Arrest and Before Trial.
>
> Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall cause the accused, whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court

may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto. No statement made by the accused in the course of any examination into his sanity or mental competency provided for by this section, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial shall in no way prejudice the accused in a plea of insanity as a defense to the crime charged; such finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury. Added Sept. 7, 1949, c. 535, Sec. 1, 63 Stat. 686.

Sec. 4245. Mental Incompetency Undisclosed at Trial.

Whenever the Director of the Bureau of Prisons shall certify that a person convicted of an offense against the United States has been examined by the board of examiners referred to in title 18, United States Code, section 4241, and that there is probable cause to believe that such person was mentally incompetent at the time of his trial, provided the issue of mental competency was not raised and determined before or during said trial, the Attorney General shall transmit the report of the board of examiners and the

certificate of the Director of the Bureau of Prisons to the clerk of the district court wherein the conviction was had. Whereupon the court shall hold a hearing to determine the mental competency of the accused in accordance with the provisions of section 4244 above, and with all the powers therein granted. In such hearing the certificate of the Director of the Bureau of Prisons shall be prima facie evidence of the facts and conclusions certified therein. If the court shall find that the accused was mentally incompetent at the time of his trial, the court shall vacate the judgment of conviction and grant a new trial. Added Sept. 7, 1949, c. 535, Sec. 1, 63 Stat. 686.

Sec. 4246. Procedure upon Finding of Mental Incompetency.

Whenever the trial court shall determine in accordance with Sections 4244 and 4245 of this title that an accused is or was mentally incompetent, the court may commit the accused to the custody of the Attorney General or his authorized representative, until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law. And if the court after hearing as provided in the preceding sections 4244 and 4245 shall determine that the conditions specified in the following section 4247 exist, the commitment shall be governed by section 4248 as herein provided. Added Sept. 7, 1949, c. 535, Sec. 1, 63 Stat. 686.

Sec. 4247. Alternate Procedure on Expiration of Sentence.

Whenever the Director of the Bureau of Prisons shall certify that a prisoner whose sentence is about to expire has been examined by the board of examiners

referred to in title 18, United States Code, section 4241, and that in the judgment of the Director and the board of examiners the prisoner is insane or mentally incompetent, and that if released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the prisoner are not otherwise available, the Attorney General shall transmit the certificate to the clerk of the court for the district in which the prisoner is confined. Whereupon the court shall cause the prisoner to be examined by a qualified psychiatrist designated by the court and one selected by the prisoner, and shall, after notice, hold a hearing to determine whether the conditions specified above exist. At such hearing the designated psychiatrist or psychiatrists shall submit his or their reports, and the report of the board of examiners and other institutional records relating to the prisoner's mental condition shall be admissible in evidence. All of the psychiatrists and members of the board who have examined the prisoner may be called as witnesses, and be available for further questioning by the court and cross-examination by the prisoner or on behalf of the Government. At such hearing the court may in its discretion call any other witnesses for the prisoner. If upon such hearing the court shall determine that the conditions specified above exist, the court may commit the prisoner to the custody of the Attorney General, or his authorized representative. Added Sept. 7, 1949, c. 535, Sec. 4, 63 Stat. 686.

Sec. 4248. Termination of Custody by Release or Transfer.

Whenever a person shall be committed pursuant to section 4247 of this title, his commitment shall run,

until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that, if he be released he will not endanger the safety of the officers, the property, or other interests of the United States, or until suitable arrangements have been made for the custody and care of the prisoner by the State of his residence, whichever event shall first occur. Whereupon the Attorney General or his authorized representative shall file with the court which made said commitment a certificate stating the termination of the commitment and the ground therefor: Provided, however, That nothing herein contained shall preclude a prisoner committed under the authority of section 4247 hereof from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus. The Attorney General or his authorized representative shall have authority at any time to transfer a prisoner committed to his custody under the authority of section 4246 or section 4247 hereof to the proper authorities of the State of his residence. Added Sept. 7, 1949, c. 535, Sec. 1, 63 Stat. 686.